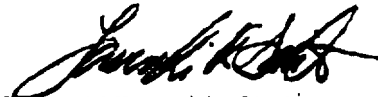


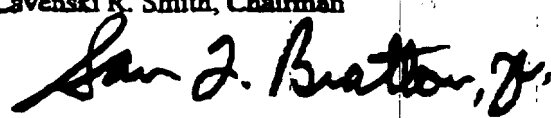
**DOCKET NO. 97-260-U****Page Two**

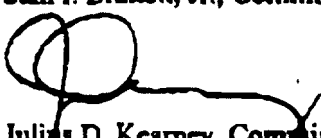
No evidence was presented that the Interconnection Agreement between SWBT and AWS discriminates against a telecommunications carrier that is not a party to the agreement or that the agreement is not consistent with the public interest. The Interconnection Agreement is a negotiated agreement and there is no evidence that the Interconnection Agreement should be rejected pursuant to 47 U.S.C. §252(e)(2)(A). Therefore, the Interconnection Agreement between SWBT and AWS filed on June 30, 1997, is approved as in compliance with Sec. 252(e) of the 1996 Act, 47 U.S.C. §252(e).

**BY ORDER OF THE COMMISSION.**

This 3rd day of September, 1997.

  
Lavenski R. Smith, Chairman

  
Sam I. Bratton, Jr., Commissioner

  
Julius D. Kearney, Commissioner

  
Jan Sanders  
Secretary of the Commission

ARK.  
SEC.COMM.  
COMM.

## ARKANSAS PUBLIC SERVICE COMMISSION

AUG 7 2 27 PM '97

FILED

IN THE MATTER OF SOUTHWESTERN BELL )  
 TELEPHONE COMPANY APPLICATION FOR )  
 APPROVAL OF INTERCONNECTION )  
 AGREEMENT UNDER THE )  
 TELECOMMUNICATIONS ACT OF 1996 WITH )  
 GTE SOUTHWEST INCORPORATED, GTE )  
 ARKANSAS INCORPORATED, GTE MIDWEST )  
 INCORPORATED (ARKANSAS) )

DOCKET NO. 97-226-U  
 ORDER NO. 2

**ORDER**

On June 5, 1997, Southwestern Bell Telephone Company (SWBT) and GTE Southwest Incorporated, GTE Arkansas Incorporated and GTE Midwest Incorporated (collectively "GTE") filed a Joint Application for Approval of an Interconnection Agreement under the Telecommunications Act of 1996. According to the Joint Application, the Interconnection Agreement was negotiated and executed pursuant to the terms of the 1996 Act.

The Telecommunications Act of 1996 (1996 Act) requires that any negotiated interconnection agreement shall be submitted to the State commission for approval. The Commission shall approve or reject the agreement within ninety (90) days of the date it is submitted by the parties to the agreement or the agreement is deemed approved. 47 U.S.C. §252(e).

The 1996 Act specifies that the Commission may only reject:

- (A) an agreement (or any portion thereof) adopted by negotiation under subsection (a) if it finds that:
- (i) the agreement (or portion thereof) discriminates against a telecommunications carrier not a party to the agreement; or
  - (ii) the implementation of such agreement or portion is not consistent with the public interest, convenience, and necessity; . . .
- 47 U.S.C. §252(e)(2).

DOCKET NO. 97-226-U  
Page Two

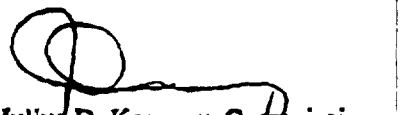
No evidence was presented that the Interconnection Agreement between SWBT and GTE discriminates against a telecommunications carrier that is not a party to the agreement or that the agreement is not consistent with the public interest. The Interconnection Agreement between SWBT and GTE is a negotiated agreement and there is no evidence that the Interconnection Agreement should be rejected pursuant to 47 U.S.C. §252(e)(2)(A). Therefore, the Interconnection Agreement between SWBT and GTE filed on June 5, 1997, is approved as in compliance with Sec. 252(e) of the 1996 Act, 47 U.S.C. §252(e).

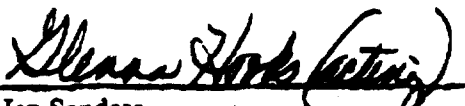
BY ORDER OF THE COMMISSION.

This 2<sup>nd</sup> day of August, 1997.

  
Lavenzi R. Smith, Chairman

  
Sam I. Bratton, Jr., Commissioner

  
Julius D. Kearney, Commissioner

  
Jen Sanders  
Secretary of the Commission

**AT&T's Supplemental Brief Addressing The Impact Of  
Section 9(f) of Arkansas Act 77 To Pending Arbitration**

**BEFORE THE ARKANSAS PUBLIC SERVICE COMMISSION**

RECEIVED  
SECRETARY'S OFFICE  
FEB 18 1997

IN THE MATTER OF AT&T COMMUNICATIONS )  
OF THE SOUTHWEST, INC.'S PETITION FOR )  
ARBITRATION OF UNRESOLVED ISSUES WITH )  
SOUTHWESTERN BELL TELEPHONE COMPANY )  
PURSUANT TO §252(b) OF THE )  
TELECOMMUNICATIONS ACT OF 1996 )

FEB 18 2 47 PM '97  
DOCKET NO. 96-395-U

**FILED**

**SUPPLEMENTAL BRIEF OF  
AT&T COMMUNICATIONS OF THE SOUTHWEST, INC.**

AT&T Communications of the Southwest, Inc. ("AT&T"), pursuant to Order No. 4 in this Docket, submits this supplemental post-hearing brief concerning the interpretation and applicability of Section 9(f) of Act 77 of 1997 to the pending arbitration.

**Interpretation and Analysis**

Section 9(f) of Act 77 of 1997 ("Act 77") states:

As provided in Sections 251 and 252 of the Federal Act (47 USC 251 and 252), the Commission's authority with respect to interconnection, resale and unbundling is limited to the terms, conditions and agrees pursuant to which an incumbent local exchange carrier will provide interconnection, resale, or unbundling to a CLEC for the purpose of the CLEC competing with the incumbent local exchange carrier in the provisions of telecommunications services to end-user customers.

The specific focus of this Section is the Commission's authority "with respect to the interconnection, resale and unbundling" that "an incumbent local exchange carrier will provide" to a "CLEC" (competing local exchange carrier). The Commission's authority in this specific regard is "limited to" (1) the terms, conditions and agreements; (2) of interconnection, resale and unbundling; (3) that

an incumbent local exchange carrier will provide to CLECs; (4) for the purpose of the CLEC competing with the incumbent local exchange carrier in the provision of telecommunications services to end-user customers; and (5) as provided in Sections 251 and 252 of the Federal Act.

Five words or phrases appearing in Section 9(f) of Act 77 are specifically defined in Section 3 of Act 77, to-wit, CLEC<sup>1/</sup>, the Federal Act<sup>2/</sup>, incumbent local exchange carrier<sup>3/</sup>, resale<sup>4/</sup>, and telecommunications services.<sup>5/</sup> Except for the Legislative Findings enunciated in Section 2 of Act 77, there are no other provisions in Act 77 that interpret, explain or apply Section 9(f).

The phrase "As provided in Sections 251 and 252 of the Federal Act" appears to modify all of the remaining provisions of Section 9(f). A straight-forward reading of Section 9(f) suggests that the Commission's authority over the interconnection, resale and unbundling incumbent local exchange carriers will provide competing local exchange carriers is coextensive with the authority provided state commissions under 47 U.S.C. §§ 251 and 252 and Federal Communications Commission ("FCC") regulations implementing these

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<sup>1/</sup> Section 3(8).

<sup>2/</sup> Section 3(14).

<sup>3/</sup> Section 3(16).

<sup>4/</sup> Section 3(21).

<sup>5/</sup> Section 3(25). Since the operative provisions of Section 9(f) are prefaced with the phrase "As provided in Sections 251 and 252 of the Federal Act," a question arises as to the meaning of these terms where there exists a parallel definition in the Federal Act (e.g., "telecommunications services").

federal statutes. Generally speaking, such authority includes:

1. The approval or rejection of any interconnection agreement adopted by negotiation or arbitration;<sup>6/</sup>
2. The approval or rejection of a Bell Operating Company's "statements of generally available terms";<sup>7/</sup>
3. The determination of the just and reasonable rate for the interconnection of facilities and equipment, unbundled network elements, transport and termination of traffic and wholesale prices for telecommunications services;<sup>8/</sup>
4. Resolving by arbitration any open issues between and imposing conditions upon an incumbent local exchange carrier and CLEC with respect to such interconnection, resale and unbundling; provided that such resolution and conditions meet the requirements of Section 251 of the Federal Act, including all regulations prescribed by Section 251(d)(1) of the Federal Act, the Commission establishes rates for interconnection, services and network elements according to 47 U.S.C. § 252(d) and the Commission provides a schedule for implementation of the terms and conditions by the parties to the arbitrated agreement;<sup>9/</sup>
5. Mediating any differences between an incumbent local exchanger carrier and a CLEC arising during the course of negotiations for an interconnection agreement under Section 252 of the Federal Act;<sup>10/</sup>
6. Establishing or enforcing, subject to Section 253 of the Federal Act, other requirements of State law in its review of an agreement, including requiring compliance with intrastate telecommunications

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<sup>6/</sup> 47 U.S.C. § 252(e).

<sup>7/</sup> 47 U.S.C. § 252(f).

<sup>8/</sup> 47 U.S.C. § 252(d).

<sup>9/</sup> 47 U.S.C. § 252(c).

<sup>10/</sup> 47 U.S.C. § 252(a)(2).

service quality standards or requirements;<sup>11/</sup>

7. Approve or disapprove the continuation of the rural telephone company exemption for qualifying incumbent local exchange carriers under the Federal Act;<sup>12/</sup>
8. Suspending or modifying the application of a requirement or requirements of Sections 251(b) or (c) to local exchange carriers with fewer than 2% of the Nation's subscriber lines installed in the aggregate nationwide;<sup>13/</sup> and
9. Prescribe and enforce regulations establishing access and interconnection obligations of local exchange carriers, which are consistent with and do not substantially prevent implementation of the requirements of § 251 of the Federal Act.<sup>14/</sup>

The phrase "will provide" appearing in Section 9(f) seems to refer to the terms, conditions and agreements of the interconnection, resale and unbundling that incumbent local exchange carriers provide CLECs under negotiated or arbitrated agreements and Bell Operating Company's statements of generally available terms. However, if this was the General Assembly's intent, a question arises as to why Section 9(i) of Act 77<sup>15/</sup>

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<sup>11/</sup> 47 U.S. § 252(e)(3).

<sup>12/</sup> 47 U.S.C. § 251(f)(1).

<sup>13/</sup> 47 U.S.C. § 251(f)(2).

<sup>14/</sup> 47 U.S.C. § 251(d)(3).

<sup>15/</sup> Section 9(i) states: The Commission shall approve any negotiated interconnection agreement or statement of generally available terms filed pursuant to the Federal Act unless it is shown by clear and convincing evidence that the agreement or statement does not meet the minimum requirements of Section 251 of the Federal Act (47 USC 251). In no event shall the Commission impose any interconnection requirements that go beyond those requirements imposed by the Federal Act or any interconnection regulations or standards promulgated under the Federal Act. (Emphasis added) Even if Section 9(i) is limited

addresses only negotiated interconnection agreements and statements of generally available terms, while ignoring arbitrated agreements. Arguably, then, Section 9(f) may apply only to arbitrated agreements.

The phrase "limited to" appearing in Section 9(f) may signify the General Assembly's intent to grant the Arkansas Public Service Commission authority (over the terms, conditions and agreements of the interconnection, resale and unbundling that incumbent local exchange carriers will provide to CLECs) granted to the state commissions under Sections 251 and 252 of the Federal Act, no more and no less.

#### Conclusion

Insofar as the pending arbitration in this Docket is concerned, AT&T respectfully submits that Section 9(f) of Act 77 specifies this Commission's authority with respect to interconnection, resale and unbundling that incumbent local exchange carriers will provide competing local exchange carriers in Arkansas pursuant to interconnection agreements arbitrated by this Commission. Such authority is limited to the authority granted state commissions under 47 U.S.C. §§ 251 and 252 and FCC regulations implementing the same. In effect, this Commission's

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to negotiated interconnection agreements and statements of generally available terms discussed in the first sentence, it appears the section's references to "shall approve" and "minimum requirements" are inconsistent with 47 U.S.C. §§ 252(e) and (f). The second sentence may have been added to prevent the APSC from acting on authority implicit in 47 U.S.C. § 251(d)(3).

authority respecting interconnection, resale and unbundling may not exceed or be less than the authority granted state commissions under the Federal Act and applicable FCC regulations.

Respectfully submitted,

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Attorneys for AT&T Communications  
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DATED: February 18, 1997

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Supplemental Post-Hearing Brief was served this 18th day of February, 1997 addressed to:

by hand delivery to:

Honorable Sarah M. Bradshaw  
Arkansas Public Service Commission  
1000 Center Street  
Little Rock, Arkansas 72201

by U.S. Mail, postage prepaid to:

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Ms. Ann Meuleman  
Southwestern Bell Telephone Company  
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